to suppose that it will not be correctly disposed of when it does. By entertaining the appeal the court has shown its readiness to do justice to the relator, and, having the power to pass upon disputed questions of fact in a way that this court on *habeas corpus* would not have, there is every reason for awaiting the result. If the relator should have any cause of complaint with it when it comes, the higher appellate courts of the state are open to him, and last of all, as already suggested, the tribunal which in federal matters is supreme. The present writ may be a short cut to relief, but according to the views expressed in *Baker* v. *Grice*, 169 U. S. 284, 18 Sup. Ct. 323, 42 L. Ed. 748, and *Minnesota* v. *Brundage*, 180 U. S. 499, 21 Sup. Ct. 455, 45 L. Ed. 640, it is not one to be encouraged. Exercising, therefore, the discretion which is vested in me in the premises, I deem it best that the proceedings pending in the state court should be allowed to take their course."

NEGLIGENCE — MUNICIPAL CORPORATION — PEST HOUSE — PROXIMATE CAUSE.—A city having, in violation of a statute, established a pest house within one mile of the city limits, the disease of small-pox was communicated to a family living near by. Plaintiff, a guest of the family for one night, contracted the disease while there, and brought suit against the city for damages therefor. *Held*, that such damages were the natural and proximate result of the violation of the statute by the city. *City of Henderson* v. *O'Haloran* (Ky.), 70 S. W. 662. Citing 1 Thompson, Negligence, sec. 48 (q. v.); Bishop, Non-Contract Law, secs. 45 and 46; 1 Sedg. Dam., secs. 128 129; *Davis* v. *Ry. Co.* (Ky.), 68 S. W. 140.

In *City of Henderson* v. *Clayton*, 57 S. W. 1, the same court had held the city responsible for the death from the same cause of Mrs. Clayton, the owner of the house. Referring to this, the court, per Hobson, J., says:

"It is just as natural, and to be as reasonably expected, that other persons who were members of the family, whether temporarily or permanently, would take the disease. If appellee had been cooking for Mrs. Clayton, whether by the day, week or month, and while cooking there had contracted the disease, which had been brought there from the pest house, plainly such a result would be no more remote than Mrs. Clayton's contracting the disease; and no sound distinction can be made between a person who lived in the house for twenty-four hours and one living there longer, if they both took the smallpox while there. The guest was a member of the family as much as the servant would be. And while it was not to be anticipated, perhaps, that a particular person would visit at this house at this time, or would be engaged there as a domestic, or be there for any other reason; still it was to be anticipated that persons would come there for various purposes, and the communication of the disease from the persons living in the house to these persons is a result as naturally to be expected as its communication from one member of the family to another. The purpose of the statute is to require the persons having the contagion of these diseases separated from the rest of the community, so as to prevent the spread of the disease. It was a result naturally to be expected when the statute was violated that the disease would be communicated to the persons living in the neighborhood, and that not only regular members of the family would take it, but also those who might, for any reason, for the time, be living with them. We therefore conclude that the damages to appellee are not too remote to be recovered for."

As the establishment and maintenance of pest houses is a governmental func-

tion (*City of Richmond* v. *Long*, 17 Gratt. 375), it is not clear that any liability rested on the city in this case—though possibly the decision may be justified on the ground of nuisance. See note to *Maia* v. *Hospital*, 5 Va Law Reg. 543.

In *Lawson* v. *Hutchings*, 118 Fed. 321, the Circuit Court of Appeals for the Seventh Circuit, construing the statute of limitations of Illinois providing that it should be extended for one year in any "actions" specified, where the judgment should be later reversed or arrested, or plaintiff be non-suited, holds the word "action" is not limited to suit at law, but includes suits in equity. The court distinguishes the law of Virginia as follows:

"We have been referred to several cases, notably *Dawes* v. *Railroad Co.*, 96 Va. 733, 32 S. E. 778; *Gray's Adm'x* v. *Berryman*, 4 Munf. 181; *Elam* v. *Bass' Ex'rs*, Id. 301; *Roland* v. *Logan*, 18 Ala. 307. It is sufficient to say, without approving or disapproving the reasoning of the court in those cases, that they are founded upon statutes unlike the one here. The reasoning of the courts in those cases is founded upon the precise terms of the statute, which sought to bar legal actions only, and extends the time only when the judgment, not going to the merits, is reversed by a writ of error, the language 'or upon appeal' not being within the terms of the statute; while in the statute we are considering the words 'suits' and 'actions' are used as convertible terms, and the reversal provided for may be by writ of error or by appeal, indicating that the word 'judgment,' as used, comprehends the decree of a court of chancery as well as the judgment of a court of law. This construction is upheld in the decision of the circuit court of appeals for the Eighth circuit in *Alexander* v. *Gordon*, 41 C. C. A. 228, 101 Fed. 91, construing the statute of Arkansas, like to the one here. It is there held that a suit at law commenced within one year after the dismissal of a chancery suit was within the saving statute, and that the statute of limitations did not bar the action. The dismissal of the chancery suit here did not go to the merits of the cause. The judgment of the appellate tribunal instructed the claimant that he had mistaken his forum. The case, in our judgment, is clearly within the intent of the statute, and we think also within the letter."

The question is only of theoretical interest, however, in Virginia. Section 2934 of the Code, as amended by the acts of 1897-8, p. 252, extends the indulgence, in terms, to "any action or suit" in which plaintiff has proceeded in the wrong forum or has brought the wrong form of action or against the wrong defendant, and judgment is rendered against him solely on that ground.

ADMIRALTY—SEAMAN—INJURY—DUTY OF SHIP TO MAKE THE NEAREST PORT.—A seaman, while in the discharge of his duty, accidentally and without fault of his own or of the ship, fell and broke his leg. The master of the ship, who was without experience in treating fractures, set the leg as well as he could, but made no change in the course of the ship. The seaman made no complaint, and the leg was supposed to be healing, but upon the arrival of the ship at her destination, the limb was examined by surgeons, who found that the bones had failed to unite and that amputation was necessary. This was made. Upon libel subsequently filed, it was held that it was the absolute duty of the master to deviate from the course of the voyage immediately after the accident to some port of distress for the purpose of procuring surgical aid for the seaman, and